Supreme Court, U. S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1974

No. 74-1548

OLD TOWN YACHT BASIN, INC.,
Petitioner,

v.

CITY OF ALEXANDRIA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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IN THE

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OCTOBER TERM, 1974

No. 74-1548

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OPINIONS BELOW

No opinion was written by the Supreme Court of Virginia or by the trial court. The Order of the Circuit Court of the City of Alexandria granting judgment to the respondent, the Order of the Circuit Court of the City of Alexandria denying petitioner's motion to vacate judgment, the Order of the Supreme Court of Virginia denying petitioner's Petition for Writ of Error, the Order of the Supreme Court of Virginia denying petitioner's Petition for Rehearing and the Order of the Supreme Court of Virginia granting petitioner a Stay are reprinted at pages 1a, 2a and 6a through 10a of the Petition, except for the Order denying petitioner's mo-

tion to vacate judgment which is reprinted herein as Appendix A.

QUESTIONS PRESENTED

1. Whether the trial court's ruling to exclude evidence on the issue of title to real estate in a suit for rent, pursuant to established landlord-tenant law, is a violation of the Fourteenth Amendment to the Constitution of the United States.

2. Whether there are special and important reasons for this Court in its sound discretion under Rule 19, Supreme Court Rules, to review on writ of certiorari the decision of the Supreme Court of Virginia to refuse the petitioner's writ of error.

STATEMENT OF THE CASE

The City of Alexandria, a municipal corporation of Virginia (hereinafter referred to as City), is the titleholder of a certain parcel of land along the Alexandria, Virginia, waterfront. The deed to said parcel is dated July 28, 1942, and is recorded in Deed Book No. 192, page 391, among the land records of the City of Alexandria. As owner in possession of this property, the City entered into a lease agreement on March 29, 1956, with Alexandria Marina, Inc. which at a later date assigned the lease to the Old Town Yacht Basin, Inc., the petitioner herein. Rent was paid to the City through December 1971, under the lease as well as under a month to month tenancy following the expiration of the original lease term.

Suddenly in January 1972, petitioner stopped paying rent to the City and has not made a rent payment to this day. The City has requested rent payments continuously and entered into good faith negotiations for new lease terms which failed. Consequently, the City instituted

an action for rent due and owing the City in the Circuit Court for the City of Alexandria, Virginia. A petition for removal to the United States District Court for the Eastern District of Virginia by the petitioner herein was denied for the reason that this action for rent was properly in the state courts. (Pet. App. 6a). On the pleadings, pretrial discovery, stipulations by both parties and argument, the trial court granted the City's motion for summary judgment and entered a judgment order in favor of the City for rent due and unpaid. The petitioner's motion to vacate the judgment was denied by the trial court and its petition for writ of error was denied by the Supreme Court of Virginia on January 10, 1975.

In the trial court and in its petition to the Supreme Court of Virginia, petitioner raised several legal defenses to the action for rent, including whether the written lease had been renewed and whether the $300 per month rent had been agreed upon. In each instance the court ruled against petitioner. As an additional defense petitioner claimed that it should not be liable for rent to the City because title to the subject property resided in the United States Government and not the City.[1] On this issue, which petitioner is raising in this petition, the state courts held that under Virginia law in such circum-

[1] Petitioner does not dispute that the City is the titleholder of record of the subject property; the City will remain the titleholder of record unless the appropriate court finally rules otherwise. The United States Government, however, claims ownership in land along the Alexandria waterfront including the subject property and has instituted litigation to try title to all waterfront property in the federal courts in the case of *United States* v. *Herbert Bryant, et al.*, Civil Action No. 2211-73 (In the United States District Court for the District of Columbia). An order dismissing that case as to most defendants (Pet. App. 7a), is on appeal to the United States Court of Appeals for the District of Columbia Circuit.

stances the tenant may not deny the landlord's title in a landlord-tenant dispute. (Pet. App. 8a).

STATEMENT OF REASONS FOR DENYING REVIEW

I.

THE TRIAL COURT'S RULING TO EXCLUDE EVIDENCE ON THE ISSUE OF TITLE TO REAL ESTATE IN A SUIT FOR RENT, PURSUANT TO ESTABLISHED LANDLORD-TENANT LAW, IS NOT A VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It is clear from the record that petitioner enjoyed a full hearing in the trial court. The judgment entered in favor of the City was based on extensive stipulations of facts, pre-trial discovery and admission of documentary evidence. Argument on the law was complete both on the motion for summary judgment at the trial and at a hearing on the petitioner's motion to vacate the judgment.

The sole issue raised by the petition is that the trial court wrongfully ruled to exclude proffered evidence denying the City's title to the subject property. The trial court ruled that as a matter of Virginia law the tenant was bound to honor the lease contract and could not avoid its obligations by attempting to set up title in a third party, a general rule followed by not less than 34 states. 49 Am. Jur.2d, *Landlord and Tenant*, § 109. In other words, as a matter of state law, the evidence proffered by petitioner to disprove the City's title to the property was irrelevant to the outcome of this case because it had no effect on a tenant's obligation to pay rent to his landlord, and unless special circumstances occur, the tenant owes a reasonable rent to the person who has granted him use of the property as his landlord and

cannot claim a windfall by challenging the landlord's title. The possession of a tenant is the possession of the landlord and a tenant will not be allowed to deny his landlord's title. *Reusens* v. *Lawson*, 91 Va. 226, 21 S.E. 347 (1895). Proof of title is not required in an action between landlord and tenant because a party is not permitted to dispute the original title of him by whom he has been let into possession. *Emerick* v. *Tavener*, 9 Gratt. (50 Va.) 220 (1852). "No matter how destitute of title the landlord may be or how clean the title of the stranger may be in the land, the tenant cannot deny the title to the former, nor affirm that of the latter, in his defense of the landlord's action for land." 11 Michie's Jurisprudence, *Landloard and Tenant*, § 61. The same principle would hold in an action for rent, as in the case under consideration.[1]

Petitioner has attempted to create a "due process" issue for the purpose of requesting review by this Court. This at best is an illusory issue in that the question raised by the petitioner is not one of constitutional due

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[1] Petitioner cites exceptions to this general rule, all of which involve questions of state law and none of which apply in this case. A challenge is permitted if a dispute arises as to the landlord's title and the tenant first surrenders possession of the land, *Stover* v. *Davis*, 57 W.Va. 196, 49 S.E. 1023 (1905), or if, at the expiration of the lease term, the tenant disclaims the landlord's title and notifies the landlord that events have proven that title is properly in himself or a third person. *Voss* v. *King*, 33 W.Va. 236, 10 S.E. 402 (1889). None of these exceptions apply in this case. The petitioner herein maintained possession throughout the proceedings, gave no legal notice that he was disclaiming the City's title and did not formally raise the question of title until the City filed suit for unpaid rent. In addition, the City has continuously claimed ownership of the subject property and has submitted bills for rent to the petitioner every month to the present time. Furthermore, the petitioner has not been threatened in a suit of paramount title to the subject property constituting the equivalent to an eviction. In short, the title dispute was never an issue formally or legally raised during the time of the tenancy which is the subject of this action for rent.

process but rather a matter of state law as to what issues are involved in a landlord's action for unpaid rent and what evidence is admissible on these issues. Inasmuch as the question of title was irrelevant to this action for rent, evidence on title had no bearing on the tenant's obligation to pay rent under the lease agreement and was properly not admitted. Moreover, the Supreme Court of the United States has held that failure of a state court to admit irrelevant evidence is not open to constitutional objection. *Chaplinsky* v. *State of New Hampshire*, 315 U.S. 568 (1942). In addition, it has been held that denial of permission to introduce testimony before a federal agency did not deprive the party of his constitutional rights. *Glen Falls Portland Cement Co.* v. *Delaware & Hudson Co.*, 66 F.2d 490 (Second Cir. 1933), cert. den. 290 U.S. 697.

In summary, the law in Virginia, as cited above and as conceded by the petitioner, is settled that a tenant is estopped from trying his landlord's title in an action for posssesion or for unpaid rent. Basing his decision on this well-settled doctrine, and on the finding that none of the exceptions to this rule applied, the trial court rightfully ruled to exclude evidence proffered by the petitioner bearing on title to the subject property, and the Supreme Court of Virginia rightfully upheld the trial court's ruling by denying the petitioner's writ of error.

It is further contended by the petitioner that it was against public policy for the trial court to disallow evidence on the City's title in the action for rent. The petitioner cites *Ellis* v. *Sutton*, 126 Miss. 102, 88 So. 519 (1921), and *City of Greenville* v. *White*, 194 Miss. 145, 11 So.2d 818 (1945) for the principle that when title is in the government it is against public policy to forbid the tenant to dispute his landlord's title. These cases are easily distinguishable and are not at all pertinent to the petition herein. In *Ellis*, a state court case dating back to 1921: 1) the issue was a dispute over title to land, not rent, 2) the case was decided as a matter of Mississippi public policy, not federal constitutional law and 3) the decision was applicable solely to the State of Mississippi. In the present case: 1) the basic issues involved a dispute over rent by virtue of a lease between the City and petitioner, not title to land, 2) the question as to the relevance of evidence was decided as a matter of state law and 3) Virginia state law governed. In *Greenville*, the Mississippi court cited the *Ellis* case for the principle that public policy should allow the tenant to question a landlord's title when the landlord is the government. But here too, there is no similarity to the petition herein. A state court, again in the State of Mississippi, was called upon to construe the terms of a lease with respect to ownership of crops cultivated on property purchased by the City of Greenville from one White and then leased to the United States Government. The principles of those cases have no application to the present case or to petitioner's contentions under the Fourteenth Amendment to the United States Constitution. Indeed, it has been held in the State of Washington that in an action by a landlord against his tenant for possession of land, it is no defense that the land is tide land, the title to which was in the United States. *Hall & Paulson Furniture Co.* v. *Wilbur*, 4 Wash. 644, 30 P. 655 (1892). "The doctrine that a tenant is estopped to deny his landlord's title is founded on public policy, in that it tends to encourage honesty and good faith between landlord and tenant." 11 Michie's Jurisprudence, *Landlord and Tenant*, § 62.

In the present case, the petitioner is attempting to avoid liability to its landlord for rent by adopting the claim by the United States that the Federal Government owns lands along the entire Alexandria waterfront

over against all the titleholders of record, which as noted previously, is now being litigated in the federal courts. That litigation points out the inappropriateness of a state court trying title in each and every landlord and tenant dispute along the waterfront. If the state courts allowed title to be tried in these disputes, both the federal and state courts would be trying title to the same property simultaneously. To further confuse the issues most of these cases, including the instant case, would not include the United States as a party. Even if petitioner had presented a federal issue, which it has not, the pendency of such complex and protracted litigation in the federal courts highlights the inappropriateness of granting a writ of certiorari in this case.

II.

THERE ARE NO SPECIAL AND IMPORTANT REASONS FOR THIS COURT IN ITS SOUND DISCRETION UNDER RULE 19, SUPREME COURT RULES, TO REVIEW ON WRIT OF CERTIORARI THE DECISION OF THE SUPREME COURT OF VIRGINIA TO REFUSE THE PETITIONER'S WRIT OF ERROR.

Rule 19(a), Supreme Court Rules, in setting forth the character of reasons which will be considered by this Court in deciding, as a matter of sound judicial discretion, whether to grant review on writ of certiorari, provides that a writ may be granted where a state court has decided a "federal question of substance." In the case under consideration, the state court did not decide a "federal question of substance", or indeed any federal question at all, when it ruled that under Virginia law the tenant in this case was estopped from trying his landlord's title and excluded evidence on title in the City's action for rent. If this were to be regarded as a federal question then every ruling of a state court excluding irrelevant evidence and every ruling on whether

certain evidence is or is not irrelevant could be relitigated in the Supreme Court of the United States. This case is a matter of state law and encompasses no issues of general importance or of federal interest.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF ALEXANDRIA

At Law No. 2449

CITY OF ALEXANDRIA, a municipal corporation of Virginia
Plaintiff

v.

OLD TOWN YACHT BASIN, INC.
Defendant

ORDER

THIS CAUSE came on to be heard on the 14th day of August 1974, upon the defendant's Motion to Vacate Judgment of this Court entered on July 10, 1974, upon the staying of said judgment by this Court on July 24, 1974 until said Motion to Vacate Judgment could be heard, upon the continuance of the hearing on said Motion to August 14, 1974, and was argued by counsel.

AND IT APPEARING TO THE COURT that the defendant's Motion to Vacate Judgment should be denied for reasons previously stated by the court; therefore, it is hereby

ADJUDGED, ORDERED and DECREED that the defendant's Motion to Vacate Judgment is hereby denied and the judgment of this Court entered on July 10, 1974 is affirmed.

AND IT IS SO ORDERED this 11th day of September, 1974.

/s/ Donald H. Kent
Judge

SEEN:

/s/ J. Howard Middleton, Jr.
J. HOWARD MIDDLETON, JR.
Assistant City Attorney
Counsel for Plaintiff

SEEN AND EXCEPTION HEREBY NOTED:

LUTZ & KAVALJIAN

/s/ Herman W. Lutz
HERMAN W. LUTZ
Counsel for Defendant

[SEAL]

A COPY TESTE:

ALVIN W. FRINKS
Clerk

BY: /s/ Jo Ann Wells
Deputy Clerk